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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION ONE

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STATE OF ARIZONA, *Appellee*,

*v.*

MARZET FARRIS, III, *Appellant*.

Nos. 1 CA-CR 15-0295, 1 CA-CR 15-0830 (Consolidated)  
FILED 10-4-2016

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Appeal from the Superior Court in Yavapai County  
No. P1300CR201100652  
The Honorable Jennifer B. Campbell, Judge

**AFFIRMED**

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COUNSEL

Arizona Attorney General's Office, Phoenix  
By David A. Simpson  
*Counsel for Appellee*

David Goldberg Attorney at Law, Fort Collins, CO  
By David Goldberg  
*Counsel for Appellant*

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**MEMORANDUM DECISION**

Judge Kent E. Cattani delivered the decision of the Court, in which Presiding Judge Michael J. Brown and Judge Maurice Portley (retired) joined.

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**C A T T A N I**, Judge:

¶1 Marzet Farris, III, appeals his convictions and sentences for first degree premeditated murder, conspiracy to commit first degree murder, tampering with physical evidence, and abandonment/concealment of a dead body. For reasons that follow, we affirm.

**FACTS AND PROCEDURAL BACKGROUND**

¶2 Laura Stelmasek was married to the victim, C.S. Over a period of eight months, Stelmasek and Farris exchanged hundreds of emails expressing their love for each other and periodically discussing plans to murder C.S.

¶3 Farris flew into Phoenix on June 1, 2011, and Stelmasek picked him up at Sky Harbor airport and drove him to a Prescott motel. Later that evening, and after receiving several phone calls and text messages from Stelmasek, Farris took a cab to her house. The next day, Farris drove to Albuquerque, New Mexico, checked into a motel near the airport, and listed the license plate number of C.S.'s van as his vehicle when registering. Farris used a friend's credit card to purchase airfare from Albuquerque back to North Carolina, and Stelmasek joined him there. Farris later called the friend and told her, "I killed someone."

¶4 On June 5, police discovered C.S.'s body wrapped in bedding in the back of his van in a parking garage at the Albuquerque airport. He had died from multiple stab wounds, including one that severed his jugular vein; the state of decomposition was consistent with having died on June 1. Based on the victim's clothing, the bedding, and blood evidence found in the house in Prescott, it appeared that C.S. had been murdered in his bed and his body dragged through the house to the garage and then transported to Albuquerque.

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¶5 Farris and Stelmasek were arrested on June 14. Farris had a healing stab wound to his knee, and C.S.'s blood was found on the bottom of Farris's shoes. The State charged Farris and Stelmasek with first degree premeditated murder, conspiracy to murder C.S., tampering with evidence, and abandonment/concealment of a dead body.<sup>1</sup>

¶6 Farris wrote letters from jail explaining what Stelmasek needed to tell her attorney in support of their fabricated claim that he had killed C.S. in self-defense. At trial, however, Farris denied murdering or conspiring to murder C.S. He testified that his emails to Stelmasek before the murder discussing ways to kill the victim were designed only to appease Stelmasek and prevent her from killing herself or her husband, and that he flew to Arizona on June 1 with the understanding that Stelmasek was going to leave her husband. He testified that he rushed to the victim's house the night of the murder because, while on the phone with Stelmasek, he heard C.S. yell, "Somebody help me. She is going to kill me . . . ."

¶7 Farris further testified that when he arrived at the house, C.S. was still alive but had already been stabbed in the neck. As he looked for a phone to call for help, he saw Stelmasek stabbing her husband. Farris testified that he tried to pull Stelmasek off C.S., but Stelmasek stabbed him in the knee and he blacked out.

¶8 Farris acknowledged removing the victim's body and several garbage bags containing evidence the next day. He testified that he dumped the garbage bags at a rest stop and a gas station on the way to Albuquerque, and abandoned the van with the victim's body in a parking garage at the airport.

¶9 The jury convicted Farris as charged. The court sentenced him to natural life for first degree murder (concurrent to lesser terms for the tampering and concealment convictions) and a consecutive term of life with the possibility of release after 25 years for the conspiracy conviction. Farris timely appealed the convictions and sentences.

¶10 The court later ordered \$3,699 in restitution for C.S.'s funeral expenses, and Farris timely appealed from that order. This court consolidated the appeals, and we have jurisdiction under Arizona Revised Statutes ("A.R.S.") § 13-4033.<sup>2</sup>

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<sup>1</sup> The court subsequently severed the codefendants' trials.

<sup>2</sup> Absent material revisions after the relevant date, we cite a statute's current version.

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DISCUSSION

I. Preclusion of Third-party Culpability Evidence.

¶11 Farris argues that the superior court erred by precluding flirtatious emails between Stelmasek and her former boyfriend B.S., which Farris characterizes as third-party culpability evidence. We review the court's ruling on the admissibility of third-party culpability evidence for an abuse of discretion. *State v. Prion*, 203 Ariz. 157, 161, ¶ 21 (2002).

¶12 Third-party culpability evidence is relevant if, viewed in the light most favorable to its proponent, it "tend[s] to create a reasonable doubt as to the defendant's guilt." *State v. Gibson*, 202 Ariz. 321, 324, ¶ 16 (2002) (emphasis omitted). The defendant must, however, show something more than mere speculation. *State v. Bigger*, 227 Ariz. 196, 208, ¶ 42 (App. 2011) (citation omitted). Moreover, the superior court may exclude third-party culpability evidence under Arizona Rule of Evidence 403 if its probative value is substantially outweighed by the danger of unfair prejudice, confusing the issues, misleading the jury, undue delay, waste of time, or needless presentation of cumulative evidence. *Id.* at ¶ 41.

¶13 Farris argued in superior court that the emails demonstrated Stelmasek had "duped, lied to, and manipulated [Farris] into a situation not of his choosing." Farris asserted that the emails showed Stelmasek had made the same professions of love to B.S., thus showing her manipulative character. The court granted the State's motion to preclude the emails, reasoning that evidence undercutting Stelmasek's claims of love for Farris added little to the extensive evidence that Stelmasek was manipulating Farris, was only marginally relevant as to Farris's guilt of the charged offenses, and would confuse the jury.

¶14 The State's theory was that Farris and Stelmasek had conspired and were accomplices in the murder of her husband. Although the emails in question arguably showed Stelmasek had previously manipulated a former boyfriend, they had little if any exculpatory value for Farris given the cumulative nature of evidence of manipulation by Stelmasek and in light of his acknowledged presence at the crime scene and his prior correspondence with Stelmasek. Thus, the superior court reasonably found the evidence to be only marginally relevant. *See Bigger*, 227 Ariz. at 208, ¶ 43. Moreover, given the tenuous and speculative nature of the evidence, the court also reasonably concluded that the risk of confusion from admitting the emails in evidence would substantially outweigh any arguable relevance. *See State v. Dann*, 205 Ariz. 557, 569, ¶ 36

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(2003). Accordingly, the superior court did not abuse its discretion by precluding evidence of the emails from Stelmasek to B.S.

**II. Accomplice Liability Instruction.**

¶15 Farris argues the superior court erred by instructing the jury on accomplice liability because the State did not provide pretrial notice of its intent to argue an accomplice theory of liability and because the trial evidence did not support the theory that Farris acted as an accomplice. Although we ordinarily review the court's decision to instruct on accomplice liability for an abuse of discretion, *State v. King*, 226 Ariz. 253, 258, ¶ 14 (App. 2011), here, Farris did not object to this instruction at trial, so we review only for fundamental, prejudicial error. *See State v. Henderson*, 210 Ariz. 561, 567-68, ¶¶ 19-20 (2005).

¶16 Even though the indictment did not expressly refer to accomplice liability, the State provided ample pretrial notice of its theory that Farris either personally killed C.S. or acted as an accomplice. An indictment must provide the defendant notice of the charges alleged, but it need not specify the theory by which the State intends to prove them, provided that the defendant receives notice sufficient to develop a reasonable defense to the allegations. *State v. Rivera*, 207 Ariz. 69, 73, ¶ 12 (App. 2004). Although not explicit, the indictment itself suggested an accomplice theory because it charged Farris and Stelmasek jointly with premeditated murder, as well as with conspiracy to commit premeditated murder. Moreover, the State noted in several pretrial filings that it intended to rely on accomplice liability as well as on evidence that Farris himself held the knife and administered the fatal wounds. And defense counsel expressed no surprise when the prosecutor argued to include accomplice liability in the preliminary instructions on the basis that "obviously this is a case where accomplice liability has been a large part of the case from the onset."

¶17 Although the court declined to instruct on accomplice liability in the preliminary instructions, it did so not because the accomplice theory was improper, but rather based on its concern that the jury might become confused between conspiracy and accomplice liability. The court's ruling expressly contemplated instructing on accomplice liability in final instructions, and allowed the parties to discuss accomplice liability in opening statements and in voir dire. And defense counsel did not allege lack of pretrial notice of the accomplice theory; instead counsel simply argued that the court should not instruct on the elements of the offenses until closing. The record thus shows that Farris received sufficient notice of the State's accomplice theory.

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¶18 Moreover, the trial evidence supported an accomplice liability instruction. An accomplice is a person “who with the intent to promote or facilitate the commission of an offense . . . [s]olicits or commands another person to commit the offense; or . . . [a]ids, counsels, agrees to aid or attempts to aid another person in planning or committing an offense[; or] . . . provides means or opportunity to another person to commit the offense.” A.R.S. § 13-301. An accomplice may be a principal participant, may provide assistance in committing or completing the offense, or may simply assist in planning the offense. *See State v. McNair*, 141 Ariz. 475, 480 (1984).

¶19 Here, Farris and Stelmasek discussed different ways to kill C.S. over the course of hundreds of emails exchanged over a period of several months before the murder. Farris acknowledged being in the bedroom when C.S. was stabbed to death, and told a friend afterward, “I killed someone.” Although he testified that Stelmasek was solely responsible for the murder and that he was trying to prevent it, the jury could have disbelieved his testimony. The trial evidence provided ample basis to suggest that, if Farris did not actually kill the victim, he assisted Stelmasek in doing so. Accordingly, the superior court did not err by instructing on accomplice liability.

### III. Prosecutorial Misconduct.

¶20 Farris argues that the prosecutor engaged in misconduct by falsely portraying a key witness—the friend who testified that Farris told her, “I killed someone”—as having no motive to lie, while knowing defense counsel could not rebut this characterization without opening the door to Farris’s prior bad acts. He also argues that the prosecutor improperly exploited this testimony in closing argument, and that the superior court erred by refusing to declare a mistrial on that basis. Because Farris did not object to the witness’s testimony, we review this claim only for fundamental, prejudicial error. *See Henderson*, 210 Ariz. at 567–68, ¶¶ 19–20. We review for an abuse of discretion the court’s denial of Farris’s request for a mistrial based on the prosecutor’s closing argument. *See State v. Jones*, 197 Ariz. 290, 304, ¶ 32 (2000).

¶21 Prosecutorial misconduct warrants reversal only if “(1) misconduct is indeed present[,] and (2) a reasonable likelihood exists that the misconduct could have affected the jury’s verdict, thereby denying defendant a fair trial.” *State v. Moody*, 208 Ariz. 424, 459, ¶ 145 (2004) (citation omitted). We consider alleged instances of misconduct cumulatively to determine whether the misconduct became “so pronounced and persistent that it permeate[d] the entire atmosphere of the

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trial,” thereby resulting in a denial of due process. *State v. Morris*, 215 Ariz. 324, 335, ¶ 46 (2007) (citation omitted).

**A. “Good Friends” Evidence.**

¶22 Two years before trial, the State filed a notice of intent to introduce, under Arizona Rule of Evidence 404(b), evidence that Farris had assaulted the same friend twice in 2005, once with a knife, and had beat up her lover. The State noted that the friend had stated that she paid Farris’s airfare because she was afraid of him and wanted to keep him away from her, and that the evidence of the 2005 assaults was relevant to show the reason for her fear, as well as relevant to Farris’s claim of self-defense. The State withdrew its Rule 404(b) notice after Farris withdrew his claim of self-defense and moved in limine to preclude other act evidence unless Farris opened the door by putting his character at issue at trial. The court then advised the State not to present “other act” evidence without first seeking permission from the court.

¶23 At trial, Farris’s friend testified on direct examination that she had paid for Farris’s plane ticket to Arizona and his return trip to North Carolina, and that on June 5, he had called and told her, “I killed someone.” The prosecutor also elicited testimony – without objection – that the friend had a 17-year relationship with Farris, they were friends, they confided in each other, she talked to him “probably every day,” she had no desire to get him in trouble, and she was not happy testifying against him.

¶24 Farris argues that the prosecutor knowingly presented false testimony “that inaccurately portrayed and bolstered [the witness’s] credibility before the jury . . . since she was in fact not a close friend to [Farris] who did not want to testify but someone with an ax to grind,” and who had falsely accused Farris of physically abusing her and had repeatedly lied to police and the parties during pretrial discovery.

¶25 Prosecutors may not present or knowingly encourage false testimony, and must correct false testimony when it appears. *Napue v. Illinois*, 360 U.S. 264, 269 (1959); *State v. Rivera*, 210 Ariz. 188, 194, ¶ 28 (2005). But a witness’s inconsistent statements alone do not establish perjury, much less that the prosecutor knowingly presented perjured testimony. *See Bucci v. United States*, 662 F.3d 18, 40 (1st Cir. 2011); *see also State v. Ferrari*, 112 Ariz. 324, 334 (1975). The witness’s credibility is an issue for the jury absent a showing that the testimony was false and that the prosecutor was aware it was false. *Rivera*, 210 Ariz. at 194, ¶ 28.

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¶26 Here, Farris failed to show that the friend’s testimony was false. Farris testified that he and the friend were “good friends,” and that he had confided in her about his relationship with Stelmasek. Farris also conceded that the friend was reluctant to testify against him. Although the friend had stated in pretrial interviews that Farris had twice assaulted her in 2005, that allegation was not necessarily inconsistent with their ongoing relationship/friendship, as related by both Farris and the friend during their trial testimony. Moreover, although Farris testified that the friend lied when saying that she did not know the plane ticket was for a trip to Arizona, the superior court later noted—and both the prosecutor and defense counsel agreed—that the friend “did an artful job of dancing around any possibility of perjured testimony,” at least with respect to whether she knew the plane ticket was for a trip to Arizona. Finally, Farris fails to cite any evidence supporting his claim that the 2005 allegations were false or that she lied repeatedly during the investigation and pretrial discovery. Accordingly, Farris has not shown prejudicial error on this basis.

¶27 Farris also argues that, by eliciting the good friends/no-desire-to-harm testimony to which he did not object, the prosecutor violated the spirit of the court’s pretrial rulings regarding other acts evidence and placed the defense in an “untenable position” because Farris was unable to impeach the witness without opening the door to the prejudicial other acts evidence. But this was not a case in which the State successfully moved to preclude evidence and then exploited the preclusion ruling to defense counsel’s disadvantage. Rather, the State had originally sought to introduce the Rule 404(b) other acts evidence, but withdrew the request before trial. The court confirmed with defense counsel that the 404(b) evidence would not come in because Farris did not want it in. The State did not violate this pretrial ruling by asking the witness about her relationship with Farris and whether she had any reason to want to get him into trouble. *See also State v. Lopez*, 234 Ariz. 465, 470, ¶ 25 (App. 2014) (witness’s credibility, including motives for testifying, is always relevant). Finally, because Farris did not attempt to impeach this witness’s credibility by any means, any assertion that whatever method he might have chosen would have opened the door to prejudicial other act evidence is at most speculative. On this record, the court did not err, much less fundamentally err, by allowing the prosecutor to elicit testimony from the witness that she and Farris were good friends who confided in each other, that she did not want to get him in trouble, and that she did not want to testify against him.

¶28 Farris further asserts that the prosecutor improperly vouched for this witness by questioning her, without objection, “about her desire not to testify or get Farris in trouble” and then by asking Farris, without

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objection, whether “[the friend] hated coming into this court. She had no desire to be here to testify against you, get you in trouble, correct?” Vouching occurs “(1) where the prosecutor places the prestige of the government behind its witness; [or] (2) where the prosecutor suggests that information not presented to the jury supports the witness’s testimony.” *State v. King*, 180 Ariz. 268, 276–77 (1994) (citation omitted). This testimony did not fit either of these definitions, and the court accordingly did not fundamentally err by allowing the prosecutor’s unobjected-to questioning.

¶29 Farris also argues in his reply brief that the State’s theory (noted in its original Rule 404(b) motion two years before trial)—that the friend was terrified of Farris—constituted a judicial admission, precluding the State from eliciting testimony at trial that they were good friends. Farris waived this argument by failing to raise it until his reply brief. *See State v. Lee*, 160 Ariz. 489, 495 (App. 1989). Moreover, the argument in the State’s 404(b) motion that the evidence of prior assaults was relevant to the friend’s credibility was not a judicial admission. *See State v. Fulminante*, 193 Ariz. 485, 492, ¶ 17 (1999) (defining judicial admission as “an express waiver made in court or preparatory to trial by the party or his attorney conceding for the purposes of the trial the truth of some alleged fact . . . so that the one party need offer no evidence to prove it and the other is not allowed to disprove it”) (citation and emphasis omitted). Accordingly, Farris has not shown prosecutorial misconduct related to eliciting testimony from the friend.

**B. Closing Argument and Denial of Mistrial.**

¶30 Farris also argues that the court erred by denying a mistrial after the prosecutor argued in closing that the friend’s testimony showed “She has no beef with the defendant. She still cares about him. She has no ax to grind. She has no doubt, no doubt what he said to her on June 5<sup>th</sup>. I killed somebody.” Farris again argues that this argument that the friend had no motive to lie was false and took unfair advantage of the risk that Farris would open the door to the other acts evidence if he impeached her credibility.

¶31 A declaration of mistrial is “the most dramatic remedy for trial error and should be granted only when it appears that justice will be thwarted unless the jury is discharged and a new trial granted.” *Dann*, 205 Ariz. at 570, ¶ 43. In assessing whether a prosecutor’s remarks are improper, the court considers whether the remarks called to the jurors’ attention matters they would not be justified in considering, and the probability, under the circumstances, that the jurors were influenced by the remarks. *Jones*, 197 Ariz. at 305, ¶ 37. The superior court exercises broad

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discretion in this context because it “is in the best position to determine whether the evidence will actually affect the outcome of the trial.” *Id.* at 304, ¶ 32.

¶32 Here, Farris testified that he and the friend remained “good friends” and that she was reluctant to testify against him, which was consistent with the prosecutor’s argument that the witness did not want to testify against Farris, “has no beef with the defendant[,] . . . still cares about him[, and] . . . has no ax to grind.” Accordingly, the court did not abuse its discretion by denying Farris’s mistrial request.

**IV. Restitution Order.**

¶33 Finally, Farris argues that the State waived its right to restitution by delaying three months and alternatively, that the court abused its discretion by awarding \$1,592.43 to the victim’s brother for expenses not directly related to burial such “as an obituary, flowers, banners and meals at the funeral.”

¶34 The superior court left the issue of restitution open at sentencing and did not set any deadlines. The State filed a request to amend the judgment to include restitution owed jointly by Farris and Stelmasek on July 15, 2015, three months after Farris’s sentencing and six weeks after Stelmasek’s sentencing. Because Farris withdrew his only objection (that the delay caused prejudice in the form of the cost of transportation to and from the hearing), we review only for fundamental, prejudicial error. *See Henderson*, 210 Ariz. at 567–68, ¶¶ 19–20. Farris has failed to establish prejudice from the delay, particularly considering that the joint and several restitution award had to await Stelmasek’s subsequent sentencing as well.

¶35 We review the substance of the court’s restitution order for an abuse of discretion. *State v. Slover*, 220 Ariz. 239, 242, ¶ 4 (App. 2009). Although Farris disputes the necessity of non-burial expenses, economic losses are recoverable as restitution if they would not have been incurred but for the defendant’s criminal conduct and were directly caused by his criminal conduct. *State v. Wilkinson*, 202 Ariz. 27, 29, ¶ 7 (2002). Money expended by a victim’s family for funeral expenses is a direct loss and recoverable as restitution. *State v. Spears*, 184 Ariz. 277, 292 (1996). Accordingly, the court did not abuse its discretion by concluding that expenses for an obituary, flowers, and meals at the funeral were reasonable funeral expenses, and thus reimbursable as restitution.

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**CONCLUSION**

¶36 For the foregoing reasons, we affirm Farris's convictions and sentences.



AMY M. WOOD • Clerk of the Court  
FILED: AA